

Appl. No.: 10/088,061

Reply to Office Action of: 07/17/2008

REMARKS

The examiner is requested to withdraw the finality of the last office action. Making the last office action "final" was premature. The examiner is directed to MPEP 706.07, (a), (c), and (d). In the present case, the last office action introduced a new ground of rejection, based upon Freeny, Jr. (US 2002/0187779 A1) that was neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c). Contrary to what the examiner stated, Applicant's amendments filed on 05/09/2007 did not necessitate the new ground of rejection. The new ground of rejection was necessitated based upon applicant's convincing arguments submitted in the Appeal Brief filed 4/14/2008 and the fact that the examiner was using a reference against the claims which was not prior art. The examiner is requested to withdraw the finality of the last office action.

Please note that Freeny, Jr. (US 2002/0187779 A1) has priority back to a provisional patent application filed September 2, 1999. The present application has priority back to September 16, 1999; a difference of only 14 days. In the event the examiner continues his use of Freeny, Jr. in any rejection of the claims, Applicant reserves the right to file a declaration under 37 C.F.R. §1.131 to swear behind Freeny, Jr. (US 2002/0187779 A1).

Claims 1, 2, 6-8, 11, 12, 14-16, 20-23 and 25-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over Birgeron

Appl. No.: 10/088,061
Reply to Office Action of: 07/17/2008

(US 6,138,009) in view of Freeny, Jr. (US 2002/0187779 A1).
The examiner is requested to reconsider this rejection.

Claim 1 has been amended above to correct an obvious minor error.

The examiner stated that Freeny, Jr. discloses a "Low Power Radio Frequency (LPRF) connection". This does not appear to be correct. Freeny, Jr. discloses use of radio frequency signals in the 900 MHz region, 1.8 GHz region, 2.4 GHz region and "in any of the other region approved by the FCC for wireless device operation". For the 2.4 GHz region, this is a disclosure of radio frequency signals in the short-range frequency bandwidth. However, this is not a disclosure of Low Power radio frequency signals. Signals sent in the 900 MHz region, 1.8 GHz region, 2.4 GHz region or "in any of the other region approved by the FCC for wireless device operation" could clearly be at a high power (or other-than low power) radio frequency strength. There is no disclosure or suggestion of a Low Power Radio Frequency (LPRF) connection as recited in the claims.

Even if, for the sake of argument, Freeny, Jr. is considered to disclose a "Low Power Radio Frequency (LPRF) connection", there appears to be no suggestion to combine Freeny, Jr. with Birgeron (at least not until after reading applicant's patent application).

Birgeron discloses an embodiment in Fig. 3 with a transmitter 11'. The transmitter 11' can push software, services, applications, updates and new or additional software to the base station 20' (see column 10, lines 16-25). The base

Appl. No.: 10/088,061

Reply to Office Action of: 07/17/2008

station 20 can, in turn, communicate with the telephone 10'. As the examiner has admitted, Birgeron fails to disclose a Low Power Radio Frequency (LPRF) connection between the base station 20' and the telephone 10'.

Freeny, Jr. discloses a proximity system having a multiple channel wireless transceiver for receiving at least two signal types such as infrared region signals, 900 MHz region signals, 1.8 GHz region signals, and 2.4 GHz region signals. As noted above, a disclosure of signals sent in the 900 MHz region, 1.8 GHz region, 2.4 GHz region or "in any of the other region approved by the FCC for wireless device operation" is not a disclosure of a Low Power Radio Frequency (LPRF) connection as recited in the claims. Clearly, it is well known in the art for base stations to send signals to mobile telephones in the 900 MHz region, 1.8 GHz region, 2.4 GHz region which are relatively high power signals; reaching miles.

Attempting to change the wireless communication of the base station 20' to the telephone 10' to a Low Power Radio Frequency (LPRF) connection would render the telephone 10' virtually useless as a telephone because it could not communicate with the base station 20' past a few dozen feet. Mobile telephones which switch base stations as the telephones move want greater signal strengths from the base stations for less call dropping; not less signal strength. A reduced signal strength from the base stations would result in more calls being dropped. This is not a desired result. Thus, it does not appear to be obvious to make the wireless connection (1,2) between the base station 20' and the telephone 10' in Birgeron a Low Power Radio Frequency (LPRF) connection. The

Appl. No.: 10/088,061

Reply to Office Action of: 07/17/2008

examiner is requested to reconsider his rejection. Claim 1 is patentable and should be allowed.

Though the claims dependent upon claim 1 contain their own allowable subject matter, these claims should at least be allowable due to their dependence from allowable claim 1. However, to expedite prosecution at this time, no further comment will be made.

Independent claims 25, 26 and 42 also recited a Low Power Radio Frequency (LPRF) connection. Thus, it is believed that this claims, and the claims dependent thereon, are also patentable and should be allowed. Again, a disclosure of signals sent in the 900 MHz region, 1.8 GHz region, 2.4 GHz region or "in any of the other region approved by the FCC for wireless device operation" is not a disclosure of a Low Power Radio Frequency (LPRF) connection as recited in the claims. Clearly, it is well known in the art for base stations to send signals to mobile telephones in the 900 MHz region, 1.8 GHz region, 2.4 GHz region which are relatively high power signals; reaching miles.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issue remain, the examiner is invited to call applicant's attorney at the telephone number indicated below.

Appl. No.: 10/088,061
Reply to Office Action of: 07/17/2008

Respectfully submitted,

Mark F. Harrington
Mark F. Harrington (Reg. No. 31,686)

9/8/08
Date

Customer No.: 29683
Harrington & Smith, PC
4 Research Drive
Shelton, CT 06484-6212
203-925-9400

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9/8/2008
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Clairie F. Mean
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